

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

60255

FILE: B-184180

DATE: November 28, 1975

MATTER OF: Culligan, Inc.

97642

DIGEST:

Bidder alleging unilateral mistake in bid after award is not entitled to reformation of its contract since contracting officer requested verification of bid and received oral and written verification within 1 day of request. Rule is that when bidder is requested to verify bid and does so, acceptance of bid creates binding contract.

Invitation for bids (IFB) No. N00104-74-B-1751 was issued June 5, 1974, by the Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania, for ion exchange compounds.

The bids were opened on June 24, 1975, and four bids were received as follows:

Culligan, Inc.	\$14.50 per unit
Bio-Rad Laboratories	39.95 per unit
Illinois Water Treatment Co.	50.20 per unit
Rohm & Haas Co.	57.55 per unit

The bids were evaluated and it was determined that Culligan, Inc. (Culligan), had submitted the lowest responsive bid. When evaluating the bid, the buyer took into consideration the previous price history, the Government estimate of the cost which was \$10.26 per unit and the impact of inflation since the last procurement.

Since there was a large disparity in Culligan's bid and the next low bid, the contracting officer, pursuant to Armed Services Procurement Regulation (ASPR) § 2-406.1 (1974 ed.), contacted Culligan by telephone on June 27, 1974. The president of Culligan reportedly verified the bid price. Culligan also verified its bid price by TWX message dated June 27, 1974. After verification, the Navy awarded contract No. N00104-74-C-D396 to Culligan on June 28, 1974.

By letter dated July 11, 1974, Culligan alleged that a mistake in its bid had been discovered and that a revised bid of \$29.80 per unit was requested. In effect, this revised bid increased the contract price by \$44,461.80. By letter dated September 30, 1974, the

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contracting officer informed Culligan that he did not have the authority to amend the contract to provide for a price increase. He suggested that Culligan could apply for relief under the provisions of Public Law 85-804 (ASPR chapter 17), which provides for granting relief if it is determined it would facilitate the national defense. ASPR § 17-204.3 (1974 ed.). By letter dated October 11, 1974, Culligan requested that contract No. N00104-74-C-D396 be amended or modified pursuant to ASPR § 17-204. Culligan's request for relief was denied on June 3, 1975. In view of the foregoing, Culligan now requests that our Office grant it the relief requested.

The contract in question, which was awarded to Culligan on June 28, 1974, related to purchase description No. 813480-I-1279, for class 3 resin. On the same day Culligan was also awarded contract No. N00104-74-C-D386, which related to purchase description No. 831490-I-1279, for class 1 resin. On June 3, 1974, Culligan requested the past procurement history of class 1 resin. The Navy responded by supplying penciled notations as to the past procurement history of class 1 resin on the bottom of Culligan's June 3 letter and returning it to Culligan. Culligan asserts that it was misled by the Navy's notations on its letter. However, the request was clearly for the past procurement history of class 1 resin and not class 3 resin, the resin necessary for performance under the contract in question.

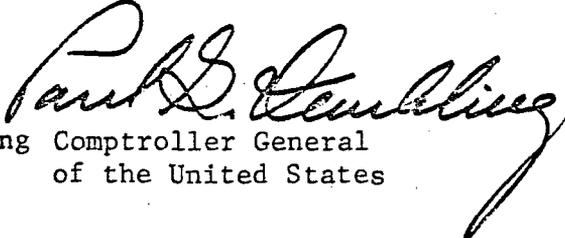
Culligan states that its unit price of \$14.50 bid under the solicitation which resulted in contract No. N00104-74-C-D396 was patently in error since a class 3 resin is the most expensive of the class 1, class 2 and class 3 resins, as the latter requires a particular balance of the class 1 and class 2 resins.

It appears that Culligan may have made a unilateral mistake due to confusion involving the two contracts awarded on June 28, 1974, for class 1 and 3 resins. The general rule with regard to mistakes alleged after the award of a contract is that the bidder must bear the consequence of its unilateral mistake unless the contracting officer knew or should have known of the mistake at the time the bid was accepted. Titan Environmental Construction Systems, Inc., B-180329, October 1, 1974, 74-2 CPD 187. When a bidder is asked to and does verify its bid, generally the subsequent acceptance of the bid creates a binding contract. Porta-Kamp Manufacturing Company, Inc., 54 Comp. Gen. 545 (1974); General Time Corporation, B-180613, July 5, 1974, 74-2 CPD 9.

Counsel for Culligan asserts that Culligan informed the contracting officer of a mistake during the telephone conversation of June 27, 1974, and did not verify its bid. Counsel further contends that the contract should not have been awarded on June 28, 1974, the day after the alleged verification, since Culligan was informed it had until July 8, 1974, to verify its bid.

It is the contracting officer's position that Culligan did not claim that a mistake in its bid had been made until July 11, 1974, almost 2 weeks after the contract had been awarded. Affidavits have been submitted by the contracting officer stating that Culligan did verify the bid in the telephone conversation of June 27 with the president of Culligan. Furthermore, it is pointed out that a TWX message dated June 27, 1974, and received by the Navy on that date, stated that Culligan accepts the bid at \$14.50 per unit. Although a letter was routinely sent to Culligan on June 27 requesting verification by July 8, it is the contracting officer's position that there was no reason to wait until that date since a TWX message was received verifying the bid prior thereto and, in any event, Culligan did not claim mistake until after that date even though notice of award had been sent on June 28, 1975.

We have reviewed the evidence of record and believe that the totality of the evidence reasonably supports the conclusion that relief should not be granted. Accordingly, Culligan's claim is denied as administratively recommended.

  
Acting Comptroller General  
of the United States